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BY HAND AND ECF

April 8, 2014

Honorable Judge Cedarbaum
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Abassi
13 Cr. 304 (MGC)

Dear Judge Cedarbaum,

We write to update the Court on discovery related issues, in anticipation of the April 10, 2014 status conference. As the Court is aware, discovery is voluminous in this case. The government has taken almost a year to complete their production of classified discovery and was more than a month late in completing production of the non-classified discovery.

This letter does not address any issues surrounding classified discovery, which will be addressed in a separate filing under CIPA. In this letter we focus on the non-classified discovery which is still outstanding. The government has consistently taken the position that their only obligation is to provide us with recordings and translations of only those portions that they intend to use at trial. We have received over a hundred and ten hours of recordings, almost all of which are in Arabic. Repeatedly, the government has described the remaining discovery as "irrelevant," consisting mostly of dinner conversations "about food." See Exhibit A, Transcript of January 30, 2014 Status Conference. That is simply not the case.

There is much more than "dinner talk" that the government has failed to translate. To elucidate, the discovery contains several conversations between the government's undercover agent and an individual named Chiheb Esseghaier. The undercover agent and Mr. Esseghaier share their opinion of the defendant, and discuss how the defendant is not a serious "mujahideen" and therefore cannot be trusted to further the aims of jihad. Although the government has translated some calls, there are dozens that they have not, claiming that they consist of idle chatter.

Additionally, there are calls between the government's undercover agent and Mr. Abassi's wife in Canada as well as his mother and father in Tunisia. These telephone calls are

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initiated by the government agent and consist of the government agent urging Mr. Abassi's family to allow Mr. Abassi to leave Tunisia and travel to the United States. These are not, as the government claims "conversations about food" or idle chatter. These calls would be relevant at trial. The jury has a right to hear the government's undercover taking it upon himself to call and convince a recalcitrant Mr. Abassi to leave Tunisia and come to the United States. It is relevant and important that the jury hear the desperation in the government agent's voice as he cajoles and reassures the defendant's parents that they should let their son travel to New York. A jury has a right to hear the undercover tell Mr. Abassi and his parents that in New York the undercover would give the defendant a place to live and a job in the undercover's company. These calls show the undercover's efforts to convince the Abassi family that it is in their son's best interest to travel to the United States.

Also relevant for the jury to consider would be the steps the undercover took to ingratiate himself within the Abassi family by feigning concern for Mr. Abassi's brother who was hospitalized. The jury should hear the undercover's phone calls to the Abassi family inquiring about their son's health and sending money for his medical care. These calls are not as the government claims, irrelevant or idle "dinner talk."

It is our position that the Court should order the government to either undertake the translations themselves or provide Mr. Abassi with the funds under the Criminal Justice Act so that he can undertake the task.

Respectfully submitted

/s/

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cc: Michael Ferrara, John Cronan & Benjamin Naftalis, AUSAs
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